

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

James Prestridge,

Plaintiff

v.

Brian Williams, et al.,

Defendants

Case No.: 2:20-cv-00061-APG-BNW

Screening Order
On Second Amended Complaint

Plaintiff James Prestridge is in the custody of the Nevada Department of Corrections (NDOC). He has submitted a First Amended civil rights complaint under 42 U.S.C. § 1983 (ECF No. 10), and he has filed a motion to file a Second Amended Complaint (ECF No. 11) and an application to proceed in forma pauperis (ECF No. 6). I will again defer the matter of the filing fee. I grant Prestridge's motion for leave to file a Second Amended Complaint and will now screen that civil rights complaint.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United

1 States, and (2) that the alleged violation was committed by a person acting under color of state
2 law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

3 In addition to the screening requirements under § 1915A, the Prison Litigation Reform
4 Act (PLRA) requires a federal court to dismiss a prisoner's claim, if "the allegation of poverty is
5 untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may be
6 granted, or seeks monetary relief against a defendant who is immune from such relief." 28
7 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can
8 be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the
9 same standard under § 1915 when reviewing the adequacy of a complaint or an amended
10 complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should be given
11 leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from
12 the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v.*
13 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
15 *Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim
16 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim
17 that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999).
18 In making this determination, the court takes as true all allegations of material fact stated in the
19 complaint, and the court construes them in the light most favorable to the plaintiff. *See Warshaw*
20 *v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are held to
21 less stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S.
22 5, 9 (1980). While the standard under Rule 12(b)(6) does not require detailed factual allegations,
23 a plaintiff must provide more than mere labels and conclusions. *See Bell Atlantic Corp. v.*

1 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action
2 is insufficient. *Id.*

3 A reviewing court should “begin by identifying pleadings [allegations] that, because they
4 are no more than mere conclusions, are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*,
5 556 U.S. 662, 679 (2009). “While legal conclusions can provide the framework of a complaint,
6 they must be supported with factual allegations.” *Id.* “When there are well-pleaded factual
7 allegations, a court should assume their veracity and then determine whether they plausibly give
8 rise to an entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim
9 for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial
10 experience and common sense.” *Id.*

11 Finally, all or part of a complaint filed by a prisoner may be dismissed *sua sponte* if the
12 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on
13 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit
14 or claims of infringement of a legal interest which clearly does not exist), as well as claims based
15 on fanciful factual allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*,
16 490 U.S. 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

17 **II. SCREENING OF SECOND AMENDED COMPLAINT**

18 Prestridge sues Warden Brian Williams, Doe NDOC Medical Director, Doe Doctors, and
19 Doe Nurses for events that took place while Prestridge was incarcerated at High Desert State
20 Prison (HDSP). ECF No. 11-1 at 1-3. He asserts two claims and seeks declaratory and monetary
21 relief.

22 Prestridge alleges the following: In June 2018, Prestridge injured his back simply by
23 bending over. The injury resulted in a sharp, intense, and long-lasting pain. He had trouble
walking, standing, and bending over, and he could not sleep or exercise because of the pain. He

1 slept on a mattress on the floor because he could not climb into the upper bunk. When he was
2 given a lower bunk, he braided sheets and attached them to the top bunk to assist him in getting
3 out of the bed.

4 Immediately after this injury, Prestridge filed numerous kites seeking medical care, but
5 the only response was “scheduled to see provider.” Prison officials never gave Prestridge a date
6 that he would see a doctor.

7 Prestridge spoke directly to the pill-call nurses. On about June 15, 2018, he told Doe
8 Nurse #1 that he had a serious back injury with stabbing pains in his lower back and left leg and
9 that he could not sustain his own weight. Doe Nurse #1 asked if Prestridge had submitted a kite
10 and indicated that he had been “scheduled to see the provider.” Doe Nurse #1 did not question
11 Prestridge about the severity of his injury, did not examine him, and did not place him on a list to
12 see a doctor immediately.

13 The following day, Prestridge told Doe Nurse #2 that he had a serious back injury with
14 stabbing pains in his lower back and left leg and that he could not sustain his own weight, that he
15 could not sleep on his back or stomach, that he could not exercise, and that he needed his make-
16 shift device to get out of bed. Doe Nurse #2 listened to Prestridge, did not make further inquiries
17 about the severity of his injury, and asked if he had submitted a kite. Doe Nurse #2 stated that he
18 had been “scheduled to see the provider.” Doe Nurse #2 did not place Prestridge on a list to see
19 a doctor immediately.

20 At some point, Prestridge told Doe Nurse #3 about his injury. Doe Nurse #3 told him
21 that her job was to pass out pills and collect medical kites. Prestridge explained that he had back
22 spasms causing him to drop to his knees, pains in his left leg, he could not sleep, and that he
23 needed a cane or a brace. Doe Nurse #3 stated that he was “scheduled to see the provider.”

1 Several months after his injury, Prestridge had a heated discussion with Doe Nurse #4, in
2 which he stated his inability to walk right or to sleep without pain, could not exercise, and
3 needed a cane. Correctional Officer Moye told Prestridge to calm down.

4 Prestridge talked to Doe Nurses #5 and #6. Both told him that he was scheduled to see
5 the provider.

6 Prestridge believes he was never placed on the list to see the doctor immediately, was
7 never given an actual date to see a provider, was never asked questions about his back or the
8 severity of his injury, was never given an examination, never given a cane or a brace, and was
9 not given pain medications. Prestridge believes that the nurses are the gatekeepers to see the
10 doctors. Prestridge asked the nurses for pain medication. The nurses responded that he was
11 scheduled to see a provider.

12 After six months, Prestridge filed an informal grievance on December 3, 2018 asking for
13 treatment. He repeatedly made requests for a back brace or cane. He received a response to his
14 informal grievance on August 14, 2019.

15 On January 11, 2019, Prestridge fell and suffered several additional injuries. He had
16 sharp and severe pain in his lower back which caused his legs to be unable to sustain his weight
17 causing him to fall. The additional injuries consisted of a bruised left arm, a twisted right ankle,
18 injuries to his hands, and a knot on his head. Prestridge had difficulty raising his arm to wash his
19 hair, and had difficulty doing simple math playing cards for the next two days.

20 He showed his injuries to Nurse Ferdie and Correctional Officer Philpot at morning pill
21 call. When Prestridge explained that he had been requesting to see a doctor for seven and a half
22 months, Nurse Ferdie told Prestridge that he should have been seen by now.

1 On January 22, 2019, Prestridge saw Dr. Bryant because of the fall. When Prestridge
2 asked why he had not been seen for seven and a half months, Dr. Bryant responded that medical
3 gets to prisoners as they can. Dr. Bryant asked questions but never conducted an “actual
4 examination” and never touched Prestridge or Prestridge’s back. Dr. Bryant was more interested
5 in Prestridge’s right ankle. Dr. Bryant ordered a back brace and a cane for Prestridge, which he
6 had been asking for the prior seven and a half months.

7 Prestridge filed a second informal grievance on March 29, 2019, indicating he had not
8 received a response to his first informal grievance. On April 19, 2019, Mr. Solomon gave
9 Prestridge a First Level Grievance, and told him to go to the First Level procedure because
10 medical had not responded to the informal grievance. Prestridge filed the First Level Grievance
11 on April 22, 2019. The First Level Grievance was rejected on April 25, 2019, for using too
12 many continuation forms. He refiled his First Level Grievance, was told that he was scheduled
13 to see a provider, and that his grievance warrants investigation by Williams. Prestridge filed a
14 Second Level Grievance on June 14, 2019.

15 On February 26, 2020, Prestridge was seeing Dr. Martin for other health issues and took
16 the opportunity to tell Dr. Martin of his back issues, and that he had only been given a cane, back
17 brace, and IBUs. Dr. Martin conducted an examination, ordered an MRI, and put Prestridge in to
18 be seen by an orthro or neuro doctor.

19 Prestridge received lidocaine injections to the base of his spine in June 2020 and March
20 2021, from Dr. Wulff.

21 In claim 1, Prestridge alleges a violation of the Eighth Amendment through deliberate
22 indifference. In claim 2, he alleges a violation of the Eighth Amendment by causing cruel and
23

1 unusual punishment. I interpret the allegations as one claim for Eighth Amendment deliberate
2 indifference to serious medical needs (claims 1 and 2).

3 **A. Deliberate Indifference to Serious Medical Needs (Claims 1 and 2)**

4 The Eighth Amendment prohibits the imposition of cruel and unusual punishment and
5 “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity, and
6 decency.’” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the Eighth
7 Amendment when he acts with “deliberate indifference” to the serious medical needs of an
8 inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth Amendment
9 violation, a plaintiff must satisfy both an objective standard—that the deprivation was serious
10 enough to constitute cruel and unusual punishment—and a subjective standard—deliberate
11 indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012).

12 To establish the first prong, “the plaintiff must show a serious medical need by
13 demonstrating that failure to treat a prisoner’s condition could result in further significant injury
14 or the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
15 2006) (internal quotations omitted). To satisfy the deliberate indifference prong, a plaintiff must
16 show “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and
17 (b) harm caused by the indifference.” *Id.* “Indifference may appear when prison officials deny,
18 delay or intentionally interfere with medical treatment, or it may be shown by the way in which
19 prison physicians provide medical care.” *Id.* (internal quotations omitted). When a prisoner
20 alleges that delay of medical treatment evinces deliberate indifference, the prisoner must show
21 that the delay led to further injury. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d
22 404, 407 (9th Cir. 1985) (holding that “mere delay of surgery, without more, is insufficient to
23 state a claim of deliberate medical indifference”).

1 A difference of opinion between medical professionals concerning the appropriate course
2 of treatment generally does not amount to deliberate indifference to serious medical needs.
3 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Additionally, “[a] difference of opinion
4 between a prisoner-patient and prison medical authorities regarding treatment does not give rise
5 to a § 1983 claim.” *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th Cir.
6 1981). To establish that a difference of opinion amounted to deliberate indifference, the prisoner
7 “must show that the course of treatment the doctors chose was medically unacceptable under the
8 circumstances” and “that they chose this course in conscious disregard of an excessive risk to
9 [the prisoner’s] health.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996).

10 I will dismiss this claim with prejudice against Williams, the only named defendant.
11 Based on the allegations, Prestridge alleges he injured his back by bending over in June 2018.
12 Prestridge asserts he informed at least six nurses of the injury and pain, and requested a cane, a
13 back brace, and pain medication. In response, he was told he was scheduled to see a provider.
14 He filed an informal grievance on December 3, 2018 complaining of the delay in seeing a
15 provider. In January 2019, Prestridge experienced a second fall that caused further injury.
16 Following this second fall, Prestridge received treatment from Dr. Bryant on January 22, 2019
17 consisting of a prescription for a back brace, a cane, and IBUs for pain.

18 These allegations raise a plausible inference that Prestridge had a serious medical need
19 prior to January 22, 2019 both because (a) he was suffering unnecessary and wanton pain, and
20 (b) the delay in treatment resulted in a further injury. Prestridge has alleged, however, that he
21 filed his First Level Grievance, to which Williams responded, in April 2019. Accordingly,
22 Williams could not have known of either the unnecessary pain Prestridge alleges he suffered
23 prior to January 22, 2019, or the delay in treatment resulting in an injury on January 11, 2019.

1 Prestridge cannot allege that, when he filed his First Level Grievance, he was suffering
2 from a serious medical need for which he was not being treated. Prestridge has alleged that he
3 was treated by Dr. Bryant and was prescribed a cane, back brace, and pain medication on
4 January 22, 2019. Prestridge's allegations that that he received additional treatment from Drs.
5 Martin and Wulff beginning in 2020 neither raises an inference of a delay in treatment nor a
6 deliberate indifference to unnecessary pain at the time Prestridge filed his First Level Grievance.
7 Rather, and construed most favorably to Prestridge, he has alleged at most a difference of
8 medical opinion regarding the medical treatment Dr. Bryant provided on January 22, 2019. As
9 Prestridge cannot allege he had an untreated serious medical need when he filed his First Level
10 Grievance, he cannot state a cognizable deliberate indifference claim against Williams.
11 Accordingly, I will dismiss Prestridge's deliberate indifference claim against Williams with
12 prejudice.

13 For similar reasons, Prestridge cannot state a cognizable deliberate indifference claim
14 against Doe Medical Director. Prestridge asserts the medical director was aware of and
15 deliberately indifferent to his serious medical need because of his Second Level Grievance.
16 However, Prestridge has alleged facts establishing that, subsequent to January 22, 2019, he did
17 not have a serious medical need for which he had not received and was not receiving treatment
18 arising from his June 2018 back injury.

19 I will again dismiss Doe Doctors and Doe Nurses without prejudice but with leave to
20 amend. Prestridge has sufficiently alleged that he had a serious medical need following an injury
21 in June 2018 for which treatment was delayed until January 22, 2019. This delay in treatment
22 resulted in unnecessary pain and, ultimately, a further injury. Prestridge has alleged that claim
23

1 only against Doe defendants. Absent a named defendant, Prestridge cannot have his Second
2 Amended Complaint served on any person, precluding him from litigating this claim.

3 **B. Leave to Amend**

4 I grant Prestridge leave to file a Third Amended Complaint to cure the deficiency of his
5 failure to name a defendant in his Eighth Amendment claim. If he chooses to file a Third
6 Amended Complaint, he is advised that an amended complaint supersedes (replaces) the original
7 and all amended complaints and, thus, the Third Amended Complaint must be complete in itself.
8 *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989)
9 (holding that “[t]he fact that a party was named in the original complaint is irrelevant; an
10 amended pleading supersedes the original”); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896,
11 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required
12 to reallege such claims in a subsequent amended complaint to preserve them for appeal). A
13 Third Amended Complaint must contain all claims, defendants, and factual allegations that
14 Prestridge wishes to pursue in this lawsuit. Prestridge should file the Third Amended Complaint
15 on this court’s approved prisoner civil rights form and it must be entitled “Third Amended
16 Complaint.”

17 If Prestridge chooses to file a Third Amended complaint curing the deficiencies of his
18 Eighth Amendment claim as outlined in this order, he must file it by November 30, 2021. If he
19 fails to do so, I will dismiss this action with prejudice for failure to state a claim.

20 **III. CONCLUSION**

21 I therefore order that a decision on the application to proceed in forma pauperis (ECF No.
22 6) is deferred.

23 I order that Plaintiff James Prestridge’s Motion to File a Second Amended Complaint
(ECF No. 11) is **GRANTED**.

1 I order the Clerk of the Court to file the Second Amended Complaint (ECF No. 11-1).

2 I order that the Eighth Amendment claim for deliberate indifference to serious medical
3 needs (claims 1 and 2) is (a) dismissed with prejudice against Brian Williams and Doe Medical
4 Director, and (b) is dismissed without prejudice with leave to amend as against Doe Doctors and
5 Doe Nurses.

6 I order that the Second Amended Complaint (ECF No. 11-1) is dismissed in its entirety.

7 I order that, if Prestridge chooses to file a Third Amended Complaint curing the
8 deficiencies of his Eighth Amendment claim as outlined in this order, he must file it by
9 **November 30, 2021**.

10 I order the Clerk of the Court to send Prestridge the approved form for filing a § 1983
11 complaint, instructions for the same, and a copy of his Second Amended Complaint (ECF No.
12 11-1). If Prestridge chooses to file an amended complaint, he should use the approved form and
13 write the words "Third Amended" above the words "Civil Rights Complaint" in the caption.

14 I order that if Prestridge fails to file a Third Amended Complaint curing the deficiencies
15 outlined in this order by **November 30, 2021**, I will dismiss this action with prejudice for failure
16 to state a claim.

17 Dated: October 23, 2021

18 

19 Andrew Gordon
20 U.S. District Judge
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